

**RULES
OF
THE TREASURY DEPARTMENT
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST BOARD**

**CHAPTER 1700-5-1
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST**

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1700-5-1-.01 IN GENERAL.

- (1) Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: The Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Services Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Savings Plan are set forth in Chapter 1700-5-2 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) Definitions. For purposes of these rules:
 - (a) “Academic term” means the school segment consisting of a single semester, quarter, term or equivalent.
 - (b) “Academic year” means a school year consisting of two (2) semesters or three (3) quarters or terms. One (1) full academic year is actuarially defined to be all full-time tuition, as such term is defined in Rule 1700-5-1-.01(2)(v) below, required to cover three (3) academic quarters at fifteen (15) credit hours per quarter or two (2) academic semesters at fifteen (15) credit hours per semester.
 - (c) “Account” means the record that contains the number of tuition units maintained on behalf of a beneficiary under the contract.
 - (d) “Beneficiary” means an individual designated under a tuition contract as the individual entitled to apply tuition units purchased under the contract to the payment of that individual’s undergraduate, graduate and professional tuition, and “other educational costs” as that term is defined in Rule 1700-5-1-.01(2)(m). The beneficiary or the purchaser must be a resident of the State of Tennessee at the time the contract was entered into by the purchaser and the Board.
 - (e) “Beneficiary’s appointee” means the person who is named in the contract by the purchaser to exercise the rights of the beneficiary under the contract if the beneficiary is a minor, dies or is legally incompetent. The beneficiary’s appointee may be the same person as the purchaser or the purchaser’s appointee. The purchaser may change the designation at any time in writing to the Board.

(Rule 1700-5-1-.01, continued)

- (f) “Board” has the same meaning as given in T.C.A. § 49-7-802(2).
- (g) “Contract” means an educational services plan tuition contract entered into under T.C.A. § 49-7-807 by the Board and a purchaser to provide for the payment of tuition and “other educational costs”, as such term is defined in Rule 1700-5-1-.01(2)(m) below.
- (h) “Educational savings plan” means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an account that is established by a purchaser for a designated beneficiary that entitles the beneficiary to apply such contributions and earnings thereon to the payment of that beneficiary’s tuition and other qualified postsecondary education expenses as set forth in Chapter 1700-5-2 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the educational savings plan are set forth in Chapter 1700-5-2 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (i) “Educational services plan” means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary’s tuition and other educational costs.
- (j) “Institution of higher education” has the same meaning as “eligible educational institution” under Section 529(e) of the Internal Revenue Code.
- (k) “Member of the family” means the brother, sister, half brother, half sister, legally adopted brother, legally adopted sister, first cousin, niece or nephew of the original beneficiary, or such other person as may be defined as a “member of the family” under the sections of the Internal Revenue Code which are applicable to the program.
- (l) “New beneficiary” means an individual to whom rights under the contract have been transferred pursuant to Rule 1700-5-1-.08.
- (m) “Other educational costs” means fees and the costs of books, supplies and equipment required for the enrollment or attendance of the beneficiary at the institution of higher education where the beneficiary is enrolled. “Other educational costs” also means the costs of room and board, as defined in Rule 1700-5-1-.01(2)(s) below, incurred while the beneficiary is enrolled in an institution of higher education on at least a half-time basis and expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with the enrollment or attendance of the special needs beneficiary at the institution of higher education where the beneficiary is enrolled.
- (n) “Permanent disability” means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a permanent disability unless the individual furnishes proof of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a permanent disability.
- (o) “Program” means the two (2) types of tuition plans authorized under the Act (the educational savings plan and the educational services plan), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.

(Rule 1700-5-1-.01, continued)

- (p) “Purchaser” means an individual, association, corporation, trust or other organized entity who enters into a contract for the purchase of a tuition unit or units on behalf of a beneficiary. Only one (1) individual, association, corporation, trust or other organized entity may be named as the contract purchaser.
- (q) “Purchaser’s appointee” means the person who is named in the contract by the purchaser to exercise the rights of the purchaser under the contract if the purchaser dies or becomes legally incompetent. The purchaser’s appointee may be the beneficiary. The purchaser may change the designation at any time in writing to the Board. If the purchaser dies or becomes legally incompetent, the purchaser’s appointee shall automatically become the purchaser for purposes of these rules and the contract, including, but not limited to, Rule 1700-5-1-.01(2)(r).
- (r) “Refund recipient” means the person designated in the contract by the purchaser as the person entitled to terminate the contract and to receive refunds arising out of the contract pursuant to Rule 1700-5-1-.10 below. The refund recipient may only be either the purchaser or the beneficiary. The purchaser may change the designation at any time in writing to the Board, provided that only the purchaser or the beneficiary is designated. In the event the purchaser is named the refund recipient and dies prior to receiving the refund, the beneficiary shall be entitled to any refund due under the contract.
- (s) “Room and board” means the amount incurred for room and board of a beneficiary, as limited by the last sentence of this subparagraph, if they are incurred during any academic term during which the beneficiary is enrolled in an institution of higher education on at least a half time basis. A beneficiary will be considered to be enrolled at least half-time if the beneficiary is enrolled for at least half the full-time academic workload for the course of study the beneficiary is pursuing as determined under the standards of the institution where the beneficiary is enrolled. The institution’s standard for a full-time workload must equal or exceed the standard established by the Department of Education under the Higher Education Act and set forth in 34 CFR 674.2(b). The amount of room and board shall not exceed the amount treated as qualified higher education expenses under Section 529(e) of the Internal Revenue Code.
- (t) “Tennessee resident” means a person who has a continuous physical presence and maintenance of a dwelling place within the State of Tennessee for at least twelve (12) months immediately prior to entering into a tuition contract hereunder, provided that absence from the State for short periods of time shall not affect the establishment of a residence. A minor child shall be deemed a Tennessee resident if the child’s legal guardian, or noncustodial parent is a resident of Tennessee. Military or diplomatic personnel whose home of record is Tennessee shall also be deemed Tennessee residents for purposes of these rules.
- (u) “Termination” means a discontinuance of the right to receive tuition payments or other benefits under a contract.
- (v) “Tuition” means the charges imposed to attend an institution of higher education as an undergraduate, graduate, or professional student and all mandatory fees required as a condition of enrollment for all students attending the institution of higher education in which the beneficiary is enrolled. Fees which are considered to be mandatory fees are defined by the institution of higher education in which the beneficiary is enrolled. Mandatory fees do not include college application fees, entrance fees, orientation fees, out-of-state residency fees or other similar fees and charges.
- (w) “Tuition unit” has the same meaning as given in T.C.A. § 49-7-802(12).
- (x) “Weighted average tuition” has the same meaning as given in T.C.A. § 49-7-807(b).

(Rule 1700-5-1-.01, continued)

Authority: T.C.A. §§49-7-802, 49-7-802(1), (3) through (8), (10), (12), and (14), 49-7-803, 49-7-805, 49-7-805(8), (13), (14), and (16), 49-7-807, 49-7-807(b), 49-7-808, 49-7-809, and 49-7-809(a)(2), (a)(3), (a)(5), and (a)(10), and 49-7-811. **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed July 31, 1998; effective November 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-5-1-.02 BOARD MEMBERSHIP AND OPERATIONS.

(1) Board Membership.

- (a) Generally. The Board shall be comprised of nine (9) members as follows: The State Treasurer; the Comptroller of the Treasury; the Commissioner of Finance and Administration; the Secretary of State; the Chancellor of the State Board of Regents; the President of the University of Tennessee System; the Executive Director of the Tennessee Student Assistance Corporation; the Executive Director of the Tennessee Higher Education Commission; and one (1) representative of the Tennessee Independent Colleges and Universities Association appointed by the State Treasurer in the manner and for the term prescribed in T.C.A. § 49-7-804(a)(9).
- (b) Designees. Members of the Board may designate members of their respective staffs to attend meetings of the Board and to exercise their right to vote in their absence. Such designations shall be in writing to the Board Chair and filed with the Secretary of State.
- (c) Expense Reimbursement. Members of the Board shall serve without compensation but shall receive reasonable reimbursement for actual and necessary travel expenses in accordance with the travel regulations promulgated by the Tennessee Department of Finance and Administration and approved by the Attorney General and Reporter.

(2) Meetings.

- (a) How Called. The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.
- (b) Telephone Conference. The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.

(Rule 1700-5-1-.02, continued)

- (c) **Quorum.** Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.
- (3) **Board Officers.**
 - (a) **Chair.** The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair shall designate another member of the Board to preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.
 - (b) **Secretary.** The Director of the Tennessee Baccalaureate Education System Trust Division of the Treasury Department shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members.
- (4) **Delegation to State Treasurer.** The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the educational services plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.

Authority: T.C.A. §§49-7-804, 49-7-804(a), (e), and (g), 49-7-805(4), 49-7-805(16), 49-7-805(17), and 4-3-2401
Administrative History: Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999.

1700-5-1-.03 CONTRACT ACCEPTANCE.

- (1) **Requirements.** A tuition contract shall not become binding upon the Board and the purchaser until all of the following occur:
 - (a) **Fee.** Receipt by the Board of the appropriate application fee, if any, from the purchaser on behalf of a named beneficiary. The beneficiary or the purchaser must be a Tennessee resident as defined in Rule 1700-5-1-.01(2)(t) at the time the contract is purchased;
 - (b) **Completed Contract.** Full completion of the tuition contract, including all required Social Security numbers and signatures, and return of the signed contract to the Board;
 - (c) **Purchase Price.** Receipt by the Board of the purchase price for at least one (1) tuition unit as consideration for the signed contract. All purchases of tuition units hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, cashiers checks, starter checks and credit card convenience checks), and payments made through payroll deductions or other similar methods acceptable to the State Treasurer; and
 - (d) **Board Acceptance.** Acceptance of the signed contract by the Board.

(Rule 1700-5-1-.03, continued)

- (2) Confirmation. Upon acceptance of the contract, the Board will send a confirmation of acceptance to the purchaser and will credit the account of the named beneficiary with the amount of tuition units initially purchased.
- (3) Rejection. If a purchaser fails to provide all the information required in Paragraph (1) of this Rule within six (6) months of the Board's receipt of the proposed contract, the Board may reject the proposed contract and refund to the purchaser all amounts paid thereunder, less any applicable fee imposed by the Board pursuant to Rule 1700-5-1-.13. Rejection of a contract shall not preclude the purchaser from reapplying for a contract in the future provided the purchaser completes a new contract and pays any additional application fee which may be required by the Board pursuant to Rule 1700-5-1-.13.

Authority: T.C.A. §§49-7-802(1), (4) and (11), 49-7-804(g), 49-7-805(8), (10), (15), (16) and (17), 49-7-806, 49-7-807, 49-7-807(c), 49-7-809, and 49-7-809(1). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002. Amendment filed December 30, 2004; effective April 29, 2005.

1700-5-1-.04 BENEFICIARY ACCOUNTS.

- (1) Separate Accounting. The Board will maintain a separate individual account for each contract, showing the beneficiary and the number of tuition units purchased, used and refunded under the contract.
- (2) Reports of Payment. If a payment has been made by the Board on behalf of a beneficiary or directly to a refund recipient, the Board will report to the beneficiary or the refund recipient information about the value of such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31 of the calendar year following the calendar year in which the payment was made.
- (3) Order of Purchases and Distributions. For purposes of these rules, the first tuition unit purchased shall be deemed the first tuition unit paid out. Further, in determining whether a particular tuition unit has been refunded or applied toward tuition, the first tuition unit purchased shall be deemed the first refunded or applied.

Authority: T.C.A. §§49-7-805(16) and 49-7-812(b). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed July 31, 1998; effective November 28, 1998.

1700-5-1-.05 PURCHASE OF TUITION UNITS.

- (1) Purchase Price. The Board shall set the purchase price of a tuition unit pursuant to T.C.A. § 49-7-807.
- (2) When Units May be Used. Tuition units may not be used to pay for tuition until two (2) full years have passed following their purchase.
- (3) Who May Purchase Units. Tuition units may be purchased for an existing account by individuals or sources other than the purchaser thereof. However, all tuition units once purchased are pooled and are subject to the terms and conditions of the applicable contract.
- (4) Limit on Number of Units. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may enter into both an educational services plan tuition contract as described in these rules and an educational savings plan tuition contract as described in Chapter 1700-5-2 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same beneficiary. In addition, more than one individual may enter into an educational

(Rule 1700-5-1-.05, continued)

savings plan tuition contract, an educational services plan tuition contract, or both, on behalf of the same beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-5-1-.02 (2)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay tuition, required fees, and room and board for seven (7) years of undergraduate enrollment at the highest cost institution of higher education.

Authority: T.C.A. §§49-7-805(11), (12), (14), (15), and (16), 49-7-806, and 49-7-807. **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002. Amendment filed March 31, 2004; effective July 29, 2004.

1700-5-1-.06 TUITION PAYMENTS.

- (1) **Eligibility for Use.** Subject to Rule 1700-5-1-.12 below, each tuition unit entitles the beneficiary to an amount equal to one percent (1%) of the weighted average tuition during the academic year in which it is used. To be eligible for use in any academic term, tuition units in a beneficiary's account must have been in his or her account for at least two (2) full years at the start of the academic term. If fewer tuition units are eligible for use than are required to pay tuition and other educational costs in that academic term, the Board will use only the eligible tuition units in the beneficiary's account.
- (2) **Part-time Attendance.** If a beneficiary attends an institution of higher education on a part-time basis, the beneficiary may use the number of tuition units required to pay for the part-time tuition and other educational costs incurred while enrolled at the institution.
- (3) **Payment to Institution of Higher Education.** Except as provided in Rule 1700-5-1-.17, the Board will make payment directly to the institution of higher education at which the beneficiary is enrolled. Payment for each academic term will be the amount due the institution for tuition and other educational costs based on the number of tuition units authorized for use by the beneficiary.
- (4) **Time Period for Use.** A beneficiary may delay enrolling in an institution of higher education, attend an institution of higher education on a part-time basis, or take time off between academic terms. Except as provided in Rule 1700-5-1-.10(4) below, there is no absolute time period in which the tuition units in a beneficiary's account must be used.
- (5) **No Guarantee of Residency Status.** Purchase of tuition units does not guarantee status as a resident for determining the rate of tuition charged.

Authority: T.C.A. §§49-7-805(15) and (16), 49-7-807, and 49-7-809. **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed May 29, 1998; effective September 28, 1998. Amendment filed July 31, 1998; effective November 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999.

1700-5-1-.07 NOTIFICATION OF INTENT TO USE TUITION PAYMENTS.

- (1) Once a beneficiary has been accepted for enrollment in an institution of higher education, the beneficiary may begin using tuition units for the payment of tuition and other educational costs of the beneficiary. Except as provided in Paragraph (2) below, there is no absolute time period within which the beneficiary must notify the Board of the beneficiary's intended use of tuition units.
- (2) If a beneficiary desires the Board to send payment directly to the institution where the beneficiary is enrolled, the beneficiary must notify the Board in writing. The notification must include the name and

(Rule 1700-5-1-.07, continued)

address of the institution and the number of units needed to pay the tuition or other educational costs. If the beneficiary intends to begin using the tuition units at the start of an academic year, the notification must be given by a certain date as shall be determined by resolution of the Board. If a beneficiary intends to use tuition units other than at the start of an academic year, the notification must be given by no later than thirty (30) calendar days prior to the start of the academic term in which the tuition units are to be applied. If a beneficiary fails to notify the Board within the time periods required in this Paragraph (2), the Board will assess a late fee to apply tuition units during the current academic year.

Authority: T.C.A. §§49-7-805(10), (14), and (16) and 49-7-807. **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999.

1700-5-1-.08 CHANGE OF BENEFICIARY AND TRANSFER OF TUITION UNITS.

- (1) **Change of Beneficiary.** Subject to the conditions set forth in Paragraph (3) below, the purchaser shall have the right to change the beneficiary of the account at any time provided the new beneficiary is a “member of the family” of the original beneficiary, as such term is defined in Rule 1700-5-1-.01(2)(k), and provided that either the purchaser or the new beneficiary is a Tennessee resident as defined in Rule 1700-5-1-.01(2)(t) at the time of the change. If the Board has chosen to charge an application fee pursuant to Rule 1700-5-1-.13, then an application fee must be paid to change the beneficiary of the account.
- (2) **Transfer of Tuition Units.** Subject to the conditions set forth in Paragraph (3) below, the purchaser shall have the right at any time to transfer all or a portion of the tuition units in the beneficiary’s account to an account for a different beneficiary provided such beneficiary is a “member of the family” of the original beneficiary, as such term is defined in Rule 1700-5-1-.01(2)(k). If the transfer is for a portion of the tuition units in the original beneficiary’s account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing beneficiary and the new beneficiary will each have at least ten (10) tuition units in their respective accounts. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-5-1-.13, then a transfer fee must be paid to transfer the funds. In addition, if the new beneficiary does not have an existing account, then (i) either the purchaser or the new beneficiary must be a Tennessee resident as defined in Rule 1700-5-1-.01(2)(t) at the time of the transfer and (ii) if the Board has chosen to charge an application fee pursuant to Rule 1700-5-1-.13, then an application fee must also be paid to open the new account for the new beneficiary.
- (3) **Conditions.** Any change of beneficiary or transfer of tuition units under this Paragraph is subject to the following conditions:
 - (a) Any request to change beneficiaries or to transfer tuition units must be made in writing, must state the name and Social Security number of the proposed new beneficiary and must be signed by the purchaser. If the request is for a transfer of tuition units to an existing account, the written request must state the account number to which the transfer is to be made;
 - (b) Payment of any applicable transfer fee charged by the Board pursuant to Rule 1700-5-1-.13;
 - (c) If applicable, payment of any application fee charged by the Board pursuant to Rule 1700-5-1-.13;
 - (d) The purchaser and the new beneficiary to whom the units are proposed to be transferred certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for the change of beneficiary or transfer of the tuition units. If the new beneficiary is a minor, the certification shall be made on behalf of the new beneficiary by the new beneficiary’s appointee; and

(Rule 1700-5-1-.08, continued)

- (e) Transfers or changes in beneficiaries under this Paragraph shall not be permitted to the extent they would constitute excess contributions under Rule 1700-5-1-.05(4).
- (4) Eligibility for Use. Any tuition units in the account of a new beneficiary may be used immediately, provided all other conditions for use of the units have been met, including the two-year waiting period.

Authority: T.C.A. §§49-7-805(8), (10), and (13) through (16), and 49-7-809(a)(2) and (a)(8). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed March 6, 1998; effective July 29, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-5-1-.09 SCHOLARSHIP RECIPIENTS.

- (1) If a beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the beneficiary, the Board will upon the request of the refund recipient and upon being furnished information about the scholarship, allowance or payment:
 - (a) Refund.
 - 1. Pay a refund to the refund recipient in an amount equal to the value of the tuition units that are not needed to cover tuition or other educational costs on account of the scholarship, allowance or payment and which would have otherwise been paid during the academic term to the institution of higher education at which the beneficiary is enrolled.
 - 2. If the scholarship, allowance or payment has a duration that extends beyond one (1) academic term, the refund recipient may request a refund in advance of the scholarship payment. The amount of the refund payable to the refund recipient will be equal to (i) the total purchase price of all the tuition units in the beneficiary's account that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the refund is made, multiplied by the number of tuition units in the beneficiary's account that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment, (iii) minus any termination fee charged by the Board pursuant to Rule 1700-5-1-.13 below. Notwithstanding this Part, the refund payable on account of any tuition units that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units, minus any termination fee charged by the Board pursuant to Rule 1700-5-1-.13.
 - (b) Retain. Retain the tuition units in the beneficiary's account for later use;
 - (c) Transfer. Transfer the tuition units to a new beneficiary pursuant to Rule 1700-5-1-.08; or
 - (d) Rollover. Roll the tuition units over to another qualified tuition plan or program for the benefit of the beneficiary or to the credit of a different beneficiary who is a "member of the family" of the original beneficiary pursuant to Rule 1700-5-1-.18.

Authority: T.C.A. §§49-7-805(14) and (16), 49-7-809(a)(8), 49-7-809(d), and 49-7-811(d). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed May 29, 1998;

(Rule 1700-5-1-.09, continued)

effective September 28, 1998. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-5-1.10 CONTRACT TERMINATION AND REFUNDS.

- (1) Contract Termination. Except as provided in Paragraphs (3) and (4) of this Rule and in Rule 1700-5-1-.11 below, a contract may not be terminated for any reason except under one of the following circumstances. A termination request must be made in writing by the refund recipient and must be accompanied with documentation acceptable to the Board to substantiate the reason for contract termination.
 - (a) The beneficiary has died or suffers from a permanent disability, as such term is defined in Rule 1700-5-1-.01(2)(n) above;
 - (b) The beneficiary is age eighteen (18) or older and has decided not to attend an institution of higher education;
 - (c) The beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an institution of higher education and the beneficiary does not plan to pursue further education;
 - (d) The beneficiary has completed the bachelor's degree requirements at an institution of higher education; or
 - (e) The beneficiary's account contains five (5) tuition units or less and no units have been purchased for the beneficiary's account for a period of at least three (3) consecutive years.
- (2) Refund Amount.
 - (a) Death or Permanent Disability. In the event a contract is terminated due to the death or permanent disability of the beneficiary, the amount of the refund paid to the refund recipient shall be equal to the greater of the following:
 1. One percent (1%) of the weighted average tuition in the academic year the contract is terminated, or if termination is due to death, in the academic year the death occurred, multiplied by the number of tuition units purchased and not used. Notwithstanding this Part, the refund payable on account of any tuition units that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units; or
 2. The total purchase price of all tuition units purchased and not used.
 - (b) Voluntary Reasons. In the event a contract is terminated under any of the conditions described in Subparagraphs (1)(b) - (1)(e) above, the amount of the refund paid to the refund recipient shall be equal to: (i) the total purchase price of all tuition units purchased and not used, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the contract is terminated, multiplied by the number of tuition units purchased and not used, (iii) minus any termination fee. Notwithstanding this Subparagraph, the refund payable on account of any tuition units that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units, minus any termination fee charged by the Board pursuant to Rule 1700-5-1-.13.

(Rule 1700-5-1-.10, continued)

- (3) **Fraud.** The Board may, at its sole discretion, terminate the contract if the beneficiary, the purchaser, the purchaser's appointee, or the beneficiary's appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the program. The amount of the refund to which the refund recipient is entitled under this Paragraph (3) shall be equal to the total purchase price of all tuition units purchased and not used.
- (4) **Inactivity.** If a period of ten (10) consecutive years passes with no activity in a beneficiary's account or with no correspondence from the beneficiary, purchaser or their respective appointees, the Board shall report and deliver the amount of any refund payable under the contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the purchaser, beneficiary, and their respective appointees. The refund shall be equal to the amount provided for in Paragraph (2)(b) of this Rule. The ten-year period shall not commence any earlier than the year the beneficiary becomes eighteen (18) years of age, or the year the account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the contract shall cease.
- (5) **Timing of Refund.** Any refund payable pursuant to Paragraph (1) above will be made in a lump sum payment to the refund recipient within sixty (60) days of the Board's receipt of a complete and substantiated request therefor. Provided, however, if the refund recipient is the beneficiary, the refund shall not be paid until the beneficiary reaches age twenty (20).
- (6) **Actual Termination Date.** Actual termination of the contract will not occur until all tuition units in the beneficiary's account have been refunded under the applicable refund schedule.

Authority: T.C.A. §§49-7-805(10), (14), and (16) and 49-7-811. **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-5-1-.11 PLAN TERMINATION.

- (1) If the Board determines that the educational services plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the contracts. Subject to Rule 1700-5-1-.12 below, the amount of the refund to which the refund recipient is entitled shall be the refund provided for in Paragraph (2)(a) of Rule 1700-5-1-.10.

Authority: T.C.A. §§49-7-805(16), 49-7-823, and 49-7-824. **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-5-1-.12 GUARANTEE ONLY TO EXTENT OF PLAN FUNDS.

- (1) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a contract shall be deemed to be due and payable only to the extent that moneys are available therefor to the credit of the educational services plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.
- (2) Should the educational services plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the plan in full, the Board shall first defray all administrative expenses of the plan. The Board shall then reduce payments owed pursuant to a contract, pro rata, to the degree necessary to bring the total disbursement of the educational services plan within the amount of the remaining funds.

(Rule 1700-5-1-.12, continued)

Authority: T.C.A. §§49-7-805(16), 49-7-823, and 49-7-824. **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999.

1700-5-1-.13 FEES.

- (1) Fees Subject to Change. The Board may assess administrative fees for the purpose of administering the educational services plan. The types of fees and amount charged are subject to change by the Board during the life of any contract.
- (2) Fee Types. Administrative fees include, but are not limited to, the following:
 - (a) Application fee;
 - (b) Termination fee;
 - (c) Tuition units transfer fee;
 - (d) Fee for failure to provide sufficient notification of intent to use contract benefits; and
 - (e) Fee for returned monetary items.

Authority: T.C.A. §§49-7-805(10) and (16). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997. Amendment filed August 31, 1999; effective December 29, 1999.

1700-5-1-.14 NOTICES AND CHANGES.

- (1) All notices, changes, and choices made under the contract must be in writing and received by the Board, along with any supporting documentation the Board may reasonably require and any applicable administrative fees.

Authority: T.C.A. §49-7-805(16). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997.

1700-5-1-.15 CONTRACT DESIGNATIONS MAY NOT BE DEFEATED BY WILL.

- (1) The right of a beneficiary or refund recipient to receive benefits in accordance with a contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.

Authority: T.C.A. §49-7-805(16). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997.

1700-5-1-.16 SOCIAL SECURITY NUMBERS.

- (1) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board will accept the contract conditionally for six (6) months of receipt of the proposed contract.

Authority: T.C.A. §49-7-805(16). **Administrative History:** Original rule filed October 30, 1996; effective February 28, 1997.

1700-5-1-.17 PAYMENTS TO BENEFICIARY.

- (1) Reimbursement of Costs Paid.
 - (a) Written Request. If the beneficiary has paid tuition or other educational costs required for the enrollment or attendance of the beneficiary at an institution of higher education, then the beneficiary may make a written request to the Board for reimbursement of the amount so paid. The request must contain a certification from the beneficiary that the amount requested was actually used to pay for his or her tuition or other educational costs. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.
 - (b) Amount and Timing of Payment. Any reimbursement made to a beneficiary under this Subparagraph will equal the amount requested, not to exceed the dollar value of the tuition units in the beneficiary's account that are eligible for use under Rule 1700-5-1-.06(1). The reimbursement will be paid to the beneficiary within sixty (60) days of receipt by the Board of the request required in Subparagraph (1)(a) of this Rule.
- (2) Advance Payments.
 - (a) Written Request. If the beneficiary has been accepted for enrollment in an institution of higher education and intends to use tuition units in the account for the payment of tuition or other educational costs required for the attendance of the beneficiary at the institution, then the beneficiary may make a written request to the Board for a distribution to be made directly to the beneficiary for the payment of such costs. The request must contain a certification from the beneficiary that the distribution will be expended solely for his or her tuition or other educational costs.
 - (b) Amount and Timing of Payment. Within sixty (60) days of receipt of the request, the Board will pay to the beneficiary an amount equal to the funds requested, not to exceed the dollar value of the tuition units in beneficiary's account that are eligible for use under Rule 1700-5-1-.06(1).

Authority: T.C.A. §§49-7-805(14), 49-7-805(16), and 49-7-809(b). **Administrative History:** Original rule filed August 31, 1999; effective December 29, 1999. Amendment filed February 28, 2002; effective June 28, 2002.

1700-5-1-.18 ROLLOVERS.

- (1) Rollovers to the Credit of Another Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may rollover all or a portion of the funds in the beneficiary's account to an account established for another beneficiary under the educational savings plan as defined in Rule 1700-5-1-.01(2)(h) or under another qualified tuition program established under Section 529 of the Internal Revenue Code provided that the beneficiary to whose account the funds are being transferred is a "member of the family" of the original beneficiary, as such term is defined in Rule 1700-5-1-.01(2)(k).
- (2) Rollovers for the Benefit of the Same Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may also rollover all or a portion of the funds in the beneficiary's account to an account established for the same beneficiary under the educational savings plan as defined in Rule 1700-5-1-.01(2)(h) or under another qualified tuition program established under Section 529 of the Internal Revenue Code.
- (3) Conditions. Any rollover under this Paragraph is subject to the following conditions:
 - (a) The purchaser makes a written rollover request to the Board on such forms as may be prescribed by the Board;

(Rule 1700-5-1-.18, continued)

- (b) Prior to honoring the rollover request, the Board may require the purchaser to establish that the plan or program to which the funds are being transferred is a qualified plan or program as defined in Paragraphs (1) and (2) above; and
 - (c) Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code.
- (4) Rollover Amount. The amount payable pursuant to a rollover request shall equal (i) the total purchase price of all the tuition units in the beneficiary's account that are being transferred pursuant to the rollover request, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the transfer is made, multiplied by the number of tuition units in the beneficiary's account that are being transferred pursuant to the rollover request, (iii) minus any transfer fee charged by the Board pursuant to Rule 1700-5-1-.13 above. Notwithstanding this Paragraph, the amount payable on account of any tuition units being transferred pursuant to a rollover request that were purchased less than two (2) full years prior to the rollover request shall equal the total purchase price paid for those units, minus any transfer fee charged by the Board pursuant to Rule 1700-5-1-.13.

Authority: T.C.A. §§49-7-805(16), 49-7-805(14), and 49-7-809(a)(8). **Administrative History:** Original rule filed February 28, 2002; effective June 28, 2002.